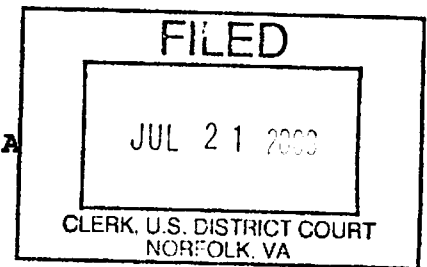


**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division**



GEORGE JUNIOR GREEN, #264458,

Petitioner,

v.

ACTION NO.
2:08cv506

GENE M. JOHNSON, Director of the
Virginia Department of Corrections,

Respondent.

FINAL ORDER

This matter was initiated by petition for writ of habeas corpus under 28 U.S.C. §2254. The petition alleges a violation of due process rights pertaining to the Virginia Department of Corrections' ("VDOC's") recalculation of petitioner's term of incarceration without a resentencing hearing in the state trial court.

The matter was referred to the United States Magistrate Judge pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and (C) and Rule 72 of the Rules of the United States District Court for the Eastern District of Virginia. The Report and Recommendation [Doc. 10], filed May 28, 2009, recommends granting the petition. Each party was advised of his right to file written objections to the findings and recommendations made by the Magistrate Judge. On June 8, 2009, the Court received respondent's Objection to the Report

and Recommendation [Doc. 15], along with respondent's Motion to Expand the Record [Doc. 11], Motion for Reconsideration [Doc. 12], and Motion for Summary Judgment [Doc. 13]. On June 29, 2009, the Magistrate Judge addressed respondent's objections and motions in a Supplemental Report and Recommendation [Doc. 18], which again recommends granting the petition. The Court has received no objections to the Supplemental Report, and the deadline for filing objections has passed.

The Court, having reviewed the record and examined the objections filed by the respondent to the Magistrate Judge's Report, and having made de novo findings with respect to the portions objected to, does hereby accept the findings and recommendations set forth in the reports of the United States Magistrate Judge, filed May 28, 2009, and June 29, 2009, respectively. It is ORDERED, therefore, that the petition be GRANTED to the extent that the Court vacate Green's sentence and order the Circuit Court for the City of Petersburg to resentence Green on the valid convictions. It is further ORDERED that Green remain in custody of the VDOC until his resentencing, but if the Circuit Court fails to resentence Green within 120 days of the entry of this order, that Green be released from custody at the end of the 120 days.

Respondent may appeal from the judgment entered pursuant to this Final Order by filing a written notice of appeal with the

Clerk of this court, United States Courthouse, 600 Granby Street, Norfolk, Virginia 23510, within 60 days from the date of entry of such judgment.

The Clerk shall mail a copy of this Final Order to the petitioner and to counsel of record for the respondent.

/s/
Rebecca Beach Smith
United States District Judge



UNITED STATES DISTRICT JUDGE

Norfolk, Virginia
July 21, 2009

*Original copy to the Circuit Court
for the City of Petersburg 7/21/09
Jc*